

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

Crl.MC.No. 2858 of 2007()

CC.9/2007 of JUDL.MAGISTRATE OF FIRST CLASS, ETTUMANUR
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PETITIONER: ACCUSED

1. E.N.LATHA,W/O. JAYAKUMAR,
ELAYADATH HOUSE, PERUMBAIKAD,
P.O. KUMARANALLUR , NOW RESIDING AT
BUNGLAVIL HOUSE,KANJIRAM P.O.,
KOTTAYAM.
2. MANJU,S/O. GOPAKUMAR,
SINDHOORAM, PALLIPPURATHUSSERI P.O.,
VAIKOM, NOW RESIDING AT KOTTAKUZHI P.O.,
KIZHAKKUMBHAGOM, ETTUMANUR, KOTTAYAM.

BY ADV. SRI.K.JAJU BABU
SMT.M.U.VIJAYALAKSHMI

RESPONDENTS: COMPLAINANT

1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.
2. THE SUB IINSPECTOR OF POLICE,
ETTUMANUR POLICE STATION,
ETTUMANUR, KOTTAYAM
(CRIME NO.376/06)

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 20/09/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2858 of 2007

Dated this the 20th day of September 2007

O R D E R

The petitioners face allegations inter alia under Section 420 I.P.C. Final report has been filed and cognizance has been taken on the basis of the said final report filed by the police after investigation. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. Absolutely no materials are available to justify an indictment against the petitioner.

2. I am of the opinion that it is for the petitioners to appear before the learned Magistrate and seek discharge under Section 239/240 Cr.P.C. Under the Code of Criminal Procedure, there are provisions which can ensure premature termination of undeserved proceedings against indictees. Ordinarily and normally indictees must resort to the procedure prescribed under the Code to claim such premature termination. This is, of course, not to say that in an appropriate case, this court lacks jurisdictional competence under Section 482 Cr.P.C to invoke the extraordinary inherent jurisdiction and to bring about premature termination. But that can certainly be only the exception. Such powers are to be invoked only sparingly and in exceptional cases. Ordinarily the indictees who feel that they are entitled for premature termination must certainly take resort to the provisions of the Code under Section 239/240 Cr.P.C. Having perused

the records and having heard the learned counsel for the petitioners I find no circumstances to invoke the extraordinary inherent jurisdiction. The petitioners must appear before the learned Magistrate and seek discharge under Section 239/240 Cr.P.C.

3. I may hasten to observe that I have not intended to express any opinion on merits. The petitioners can raise all relevant contentions to claim premature termination of the proceedings under Section 239/240 Cr.P.C. The learned counsel for the petitioners submits that unnecessary insistence on personal appearance of the petitioners would work out great prejudice, hardship and loss to the petitioners. The petitioners can certainly appear and then seek exemption from personal appearance. I find no reason why the learned Magistrate must insist on the personal appearance of the petitioners on all dates of posting. Their plea for discharge can be heard in the presence of their counsel without insisting on their personal appearance.

With the above observations, this Criminal Miscellaneous Case is dismissed.

(R.BASANT, JUDGE)

jsr

// True Copy//

PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007